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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,790	07/14/2003	Richard J. Dibbs	17306/106	7314

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EXAMINER	
WEIER, ANTHONY J	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 07/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/618,790	DIBBS, RICHARD J.	
	Examiner	Art Unit	
	Anthony Weier	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-37 and 62-73* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-37 and 62-73* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1, 2, 11-22, and 62-73 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 97/02751.

WO 97/02751 discloses a system for egg pasteurization including a loading system (use of at least a moving belt, trough, etc.), microwave (which has the ability heat at 59 C), a heat exchanger (e.g. hot air oven; employing treatment for a certain desired time and temperature), cooling means (to 7 C or lower) and packaging means. The claims call for said microwave system configured to impart microwave energy to a yolk of the shell egg in accordance to size and temperature of the yolk to heat same to a first predetermined temperature and to impart microwave energy to an albumen of the shell egg to heat the albumen to a second predetermine temperature. However, heating the egg based on size would have been well within the purview of one having ordinary skill in the art, and, absent a showing of unexpected results, it would have been obvious to one having ordinary skill in the art at the time of the invention to have heated same at different temperatures based on size through routine experimental optimization. Clearly, eggs having different sizes would require different heating to effect all eggs having a uniform total heat exposure. It should be further noted that the apparatus of

WO 97/02751 is capable of treating egg to the temperature and tme parameters as called for in instant claims 13 and 14. In addition, it should be noted that WO 97/02751 further discloses a third heating means as set forth in claim 19. The apparatus used therein would be capable of providing equilibration for the eggs and to the temperature as called for in claims 20-22 (pages 5-8). Furthermore, Example 2 shows the concept of an apparatus employed to deliver eggs heated to an equal extent.

As for heating the albumen and yolk to different temperatures, same would have inherently occurred due to the difference in material make-up of the two egg components. As for predetermining what these temperatures are to be, such would have been further obvious through routine experimental optimization in view of what results are attained with respect to the degree of microwaving employed. The apparatus of WO 97/02751 would be capable of changing such temperature/time variables to accommodate such desired conditions.

3. Claims 3, 23, 24, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 97/02751 taken together with Neiderer et al.

The claims further call for a high speed grading system. However, such are notoriously well known as taught, for example, by Neiderer et al. It would have been obvious to one having ordinary skill in the art at the time of the invention to have included same as convenience in separating eggs.

4. Claims 4, 5, 26, 27, and 29-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied in paragraphs 2 or 3 taken together with JP 2000-14269.

The claims further call for said system including an egg washer and drier. However, such means are conventional in the art as taught, for example, by JP 2000-14269. It would have been obvious to one having ordinary skill in the art at the time of the invention to have included same to provide cleaner eggs.

5 Claims 6-8 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied in pargraphs 2 or 3 taken together with Van der Schoot (U.S. Patent No. 4872564)

The claims further call for direct detector , crack detector, leak detector and removal systems therein. Van der Schoot teaches an egg apparatus which detects dirt, cracks, and leaks in eggs and which consequently removes same (see Figures). It would have been obvious to one having ordinary skill in the art at the time of the invention to have employed same as an automated, quicker way to remove unwanted eggs during processing of same.

6. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 97/02751 taken together with Anshutz.

The claims further call for said apparatus to include means for weighing and removal of shelf based on weight. However, such devices are well known as taught, for example, by Anshutz (col. 3). It would have been obvious to one having ordinary skill in the art at the time of the invention to have provided such device as a convenience to classifying and providing a more uniform egg product.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Anthony Weier
Primary Examiner
Art Unit 1761

6/21/05

Anthony Weier
June 27, 2005